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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: NPRM - WC Docket 11-39 in re: Truth in Caller ID Act of 2009

Dear Ms. Dortch:

I submit the following comments to the Commission for its consideration in implementing the Truth in Caller ID Act of 2009.

Creditors and debt collectors (and telemarketers, survey companies, and politicians) often spoof their CPN and instead transmit their main toll-free number as their Caller I.D. phone number digits ("CPN"). As the Commission recognizes, this is probably a legitimate use of CPN spoofing. A problem, however, lies in the display of the name string associated with the CPN.

As the Commission is aware, in the U.S. PSTN, the caller name string ("CNAM") is <u>not</u> transmitted with the call setup, but rather is overlaid by the terminating LEC switch by doing a lookup in the LIDB/CNAM database using the CPN transmitted with the call as the lookup key, and then sending both the CPN and the name string obtained from the LIDB/CNAM database to the recipient's Caller I.D. display unit.

A frustrating deficiency with the SS7 network is that the LIDB/CNAM databases do <u>not</u> hold CNAM information for toll-free numbers. I do not know if this is because the databases do not support toll-free records by design, or if the industry as a whole is deficient in uploading their toll-free numbers to the CNAM databases as part of the provisioning process. But, in any event, the end result is that the recipient of the call will see the generic descriptor "TOLL FREE CALL" in his/her Caller I.D. display. As commenter John Q. Public cited, this is a great disservice to the public. The FDCPA (Fair Debt Collection Practices Act) and TCPA were passed in an era before Caller I.D. existed and the only way to ascertain the identity of the caller was to answer the call and orally ask the caller his/her identity. However, today we have Caller I.D. as ubiquitous technology, and consumers and businesses rely upon the technology to screen their calls to decide whether or not to answer the call. Further exacerbating this deficiency, is the fact that creditors and debt collectors are perfectly happy with the generic descriptor "TOLL FREE CALL" being displayed because it forces the recipient to answer the call, and a debt collector's objective is to establish communication with the consumer. Telemarketers, survey companies, and political callers like the generic "TOLL FREE CALL" for the same reason—it forces the consumer to answer the call, and the caller can at least have live communication with the recipient. This commenter suggests that the FCC should force the CNAM database vendors to accommodate records for toll-free numbers, and force the toll-free number providers to add a CNAM record for each or their toll-free numbers, just like occurs with a

regular telephone number. This would ensure that Caller I.D. recipients can view both the number <u>and</u> name of callers transmitting a toll-free number as their CPN, instead of the generic descriptor "TOLL FREE CALL".

The exact same problem exists with several of the cellular companies. For example, AT&T Mobility by default lists their cellular subscribers in the LIDB/CNAM database such that the subscriber's name will be displayed on the recipient's Caller I.D. display. Although they are listed by default, the subscriber can opt-out of name and/or number transmission by a simple checkbox on AT&T Mobility's billing website. In contrast, Verizon Wireless does <u>not</u> add any of their subscribers in the LIDB/CNAM database, so all Verizon Wireless callers will display the generic "WIRELESS CALLER" or "CITY   STATE" to the recipient (based upon a crude city/state lookup of the NPA-NXX). Worse yet, Verizon does not even offer an option for subscribers to have their name display. It simply isn't available to Verizon Wireless subscribers. This commenter suggests that the FCC should also force wireless carriers to at least make the option available for its subscribers' to list their names in the LIDB/CNAM databases. This commenter suggests that AT&T Mobility's approach of display by default, but subscriber can opt-out, is the best way to implement Caller I.D. for cell phone carriers, and further avers that the FCC should make the carriers display by default with an opt-out option, just like AT&T Mobility.

Back to the toll-free number problem. In the case of the debt collectors, today's debt collectors use predictive dialers to make thousands of phone calls simultaneously and automatically. Many use unattended campaigns and play pre-recorded messages inviting the recipient to return the call. Many violate the FDCPA by failing to provide meaningful identification in the pre-recorded message as required by FDCPA 1692d(6) and 1692e(11), and the Caller I.D. name displays as "TOLL FREE CALL", so there is no way for the consumer to know the identity of the debt collector or even that it is a debt collector, except to return their call, which wastes the consumer's time and causes unnecessary frustration and aggravation. It is simply unfair that the debt collectors have forced the burden onto the consumers to endure a barrage of robocalls and force the consumer to waste his time returning the collector's phone call, just to get the robocalls to stop. When the debt collector blocks his number, or transmits a spoofed number, or transmits a legitimate toll-free number but no name, the only recourse for the consumer is to return the call, (or listen to the entire pre-recorded message and hope there is an option to speak with a live operator at the end of the message, and such an option is not always offered). There is huge tension between consumers and the debt collection industry and their trade association (ACA) on the applicability of the TCPA to debt collection calls. In the case of *Watson v. NCO Group, Inc*. (462 F. Supp. 2d 641 (E.D. Pa. 2006)), the District Court ruled that the debt collector (NCO) was calling the wrong consumer, and in that case, there was no pre-existing relationship with the wrong consumer, and the wrong consumer's privacy was adversely affected. Thus, the Court ruled that TCPA applies in this situation.

This commenter was recently subjected to a barrage of robodialed calls from a debt collection agency called Nationwide Credit, Inc. Nationwide initiates calls from an India call center and spoofs their Caller I.D. number with a number that gives the "disconnected" recording when the number is dialed back. The name displays "UNAVAILABLE". This is a perfect example of a situation where the consumer's only recourse is to answer the call in order to ascertain the identity of the caller. And Nationwide's operational policy is to continually robodial the alleged debtor (multiple times the same day) until a live contact is made. Again, this commenter avers that debt collectors like this result because it forces the consumer to answer the call, which is exactly what the debt collectors want. This commenter suggests that the Commission mandate that debt collectors,

like telemarketers, must transmit a valid CPN where the alleged debtor can call during normal business hours to exercise his FDCPA rights to stop the communications (similar to the TCPA rationale). And this commenter further avers that the Commission should mandate that all debt collectors must have their name listed in the LIDB/CNAM database so that aggrieved consumers know the company to sue under FDCPA (for both regular and toll-free numbers). Furthermore, this commenter suggests that debt collectors, survey companies, political callers, and other entities exempt from TCPA should nonetheless be prohibited from blocking their Caller I.D. for the same reasons as why telemarketers are prohibited from blocking, i.e., so the consumer knows whom to sue for violations.

As the Commission mentioned in its NPRM, companies such as NobelBiz offer a technology where a local NPA-NXX-XXXX DID (direct-inward-dial) number can be assigned on-the-fly and transmitted as the CPN so that the recipient is tricked into thinking it is a local call and is more likely to answer the call. This technology is used by many debt collectors today. This commenter has experienced this trickery first hand. Furthermore, since the DID number is assigned real-time on-the-fly it is not listed in the LIDB/CNAM database, so the Caller I.D. name will display as "UNAVAILABLE". When this local number is dialed back, it routes the call back to the debt collector, and the collector knows exactly which consumer is calling them back because the unique DID identifies the consumer for whom it was generated. This technology, when used by debt collectors, probably violates FDCPA prohibitions against misrepresentation/deception [FDCPA 1692e(10)], meaningful identification [FDCPA 1692e(6)], and causing charges to be incurred by concealing the true purpose of the call [FDCPA 1692f(5)]. The Commission could help ameliorate abuse of this technology by debt collectors and other types of entities by requiring that a CNAM be added to the LIDB/CNAM database for each of the DID's used by the provider. Since CNAM additions to the LIDB database are not necessarily propagated real-time throughout the SS7/PTSN network, a viable solution may be to require the DID provider to pre-assign blocks of DIDs to a particular client so that the client's CNAM for those blocks can be added to the LIDB database in advance of usage with enough lead time so that the CNAM additions will propagate throughout the SS7/PTSN network. (Because the terminating LEC must pay for each CNAM lookup, some LEC's, especially CLEC's, cache the CNAM database and do not update their cached copies in a timely manner).

I would also like to suggest that the Commission force the telephone companies to expand the Anonymous Call Rejection capability. Currently, my local telco, AT&T U-Verse, has their Anonymous Call Rejection feature configured in such a way that it will only reject calls where the caller has blocked his call with *67 or with per-line blocking. It will <u>not</u> block calls where the CPN is blank, or "UNAVAILABLE", "111-111-1111", "000-000-0000", or other nonsensical CPN's, etc., where the caller is transmitting blank or garbage digits. This leaves a huge loophole in consumers' ability to control their privacy because most types of anonymous calls get through. In fact, since the terminating LEC is doing a LIDB/CNAM lookup anyhow, the terminating LEC could easily look at the working/nonworking number flag in the LIDB database record and reject calls from numbers that show they are a non-working number in the LIDB database (and by the way, this suggestion would help prevent Caller I.D. spoofing because at least the CPN must be a working number). And consumers should be able to more easily obtain the data about the caller's ANI or CIC when they do a *57 call trace. Currently, the Commission has rules restricting the LEC from releasing the info about the caller without a subpoena. The rationale was because someone who has blocked his Caller I.D. with *67 or per-line blocking should have his privacy respected. However, in the case of telemarketers, debt collectors, and other bad actors who are not legitimately blocking their number, who are prohibiting from blocking their number, or purposely falsifying or

3

obscuring their number, the consumer should be able to easily find the identity of the caller with *57 Call Trace so the consumer can sue the offender without having to resort to a subpoena. And the $8.00 fee that my LEC charges for each Call Trace becomes cost prohibitive for a consumer who is trying to stop the onslaught of telemarketers who ignore the TCPA do-not-call rules and call anyhow with spoofed Caller I.D.'s. The only way to identify these bad actors is through a Call Trace which will hopefully reveal the ANI of the caller or the CIC of the long distance carrier. This $8.00 fee should be reduced or eliminated.

If the Commission agrees that debt collectors should be prohibited from blocking their CPN's, then there will be some difficulty in defining a "debt collector". Merely referencing the definition of "debt collector" in the FDCPA is not sufficient, because the FDCPA does not generally cover the original creditor, and excludes some types of third party debt collectors such as those involved in foreclosures. Many of the parallel state debt collection laws (e.g., California Civil Code 1788 et seq.) do cover the original creditor, but they don't cover all debts (e.g., CA Civil Code 1788 only covers "consumer credit transactions"). So probably the best solution is to define it in terms of the content of the call, i.e., if the purpose of the call is directly or indirectly related to collecting an obligation, then the CPN must be displayed (cannot be blocked) and a valid CNAM must be listed in the LIDB/CNAM database.

Lastly, another side-effect of the terminating LEC having to pay to do a lookup in the LIDB/CNAM database in order to obtain the CNAM string, is that some LEC's try to minimize cost. Some LEC's will simply refuse to do the CNAM lookup and instead send "UNAVAILABLE" to the recipient. This will potentially be a problem if the Commission agrees to mandate that toll-free numbers be included in the LIDB/CNAM databases, because the LEC may have logic programmed in its switch where it will never do a CNAM lookup for a toll-free number because toll-free numbers were not theretofore in the LIDB/CNAM database. Other LEC's will create their own local cached CNAM database copy and query their local cached copy first before having to pay to do a lookup externally. This causes problems because the cached local copy falls out-of-synch with the main LIDB/CNAM database. For example, this commenter had wireline service with Cox Communications, and it took nearly 4 months before Cox began displaying the correct CNAM for one of this commenter's friends who had just obtained a new phone number (Cox was displaying the CNAM of number's former owner which was stale in their local CNAM cached database).

I thank the Commission for consideration of these comments.

Sincerely,

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